

TOWN OF TIVERTON  
ZONING BOARD OF REVIEW MINUTES

December 2, 2015

The following petitions were received and were heard by the Tiverton Zoning Board of Review on Wednesday, December 2, 2015 at 7:00 p.m. at the Tiverton Town Hall, 343 Highland Road.

Members present: Chairwoman Ms. Lise Gescheidt, Mr. David Collins, Mr. Richard Taylor, Mr. Jay Jackson, Ms. Wendy Taylor-Humphrey, and Mr. George Alzaibak first alternate.

Also present were: Mr. Peter Swirkza, Esq., Town Solicitor, Neil Hall, Building Official, and Ms. Sally Ferreira, Court Reporter.

1. A petition has been filed by Tracie & George Fountas of Andover, MA requesting a special use permit to Article VII Section 4.b. of the Tiverton Zoning Ordinance in order to allow a recently constructed deck/stairs which provide access to the single family residence to remain at 10 Shore Road, Tiverton, RI being Plat 806 Lot 151 on Tiverton Tax Assessor's maps closer then the allowed front yard setback and exceeding lot coverage in a R80 zoning district.

**DECISION:**

William Smith, president of Civil Engineering Concepts of Little Compton, Rhode Island was present along with Dr. Tracie Fountas. Mr. Smith was sworn in and Mr. Taylor made a motion to accept Mr. Smith as an expert witness and Mr. Jackson seconded. The vote was unanimous. Voting were: Chairwoman Ms. Lise Gescheidt, Mr. Richard Taylor, Mr. Jay Jackson, Ms. Wendy Taylor-Humphrey and Mr. Collins.

Mr. Smith explained the petitioners are asking permission to exceed the lot coverage to allow the existing deck and set of stairs to remain. Dr. Fountas was sworn in and presented a brief history of the property. She explained the cottage was completely renovated and they built a temporary structure to allow an exit out of the cottage. Dr. Fountas stated while the renovations were going on, she was in contact with the interim building official and the newly hired building official Neil Hall trying to figure out what to do with the stairs. Dr. Fountas went on to say the building inspector's office was waiting to hear from the town attorney as to what they were allowed to do.

The photographs submitted with the petition were discussed and were marked as an exhibit. Mr. Hall was sworn in and stated his office had been going back and forth with the petitioners and more information was needed based on what was built and what they were trying to build.

Dr. Fountas also stated she was under the direct impression that consultation with the town's attorney was needed to make a decision of what was allowed and not allowed and waited approximately seven months until she inquired and then received the notice of violation.

Augusto DeSa of 32 Shore Road stated he has no objection to the structure remaining and he thinks it improves the area. There were no further comments from the public.

At this time, the Board closed the Public Hearing and began a discussion for the purpose of reaching a decision. Mr. Alzaibak stated the town's attorney at the time did not follow up with the building inspector's office which put them in a bad spot and they didn't have an answer and couldn't give the petitioners an answer so he would not hold that against the petitioners. Mr. Collins and Mr. Taylor agreed that this deck is not detrimental to the public health, safety, morals or welfare of the community. Mr. Collins went on to say it will be compatible with neighboring uses and will not adversely affect the general character of the area. Mr. Jackson was not opposed to the structure. Ms. Taylor-Humphrey stated based on everything she heard tonight she would probably vote to grant this variance.

Mr. Collins made a motion to grant the request for a special use permit with the condition that the design and structure be fully approved by the Building Official. He finds that based upon testimony given and the evidence received that the public convenience and welfare will be served, that it is not detrimental to the public health, safety, morals or welfare, that it will be compatible with neighboring uses and will not adversely affect the general character of the area, that it will not create a nuisance in the neighborhood nor hinder or damage vehicular or pedestrian movement. The requirement to provide water service and sanitary service, fire protection for the deck, is not applicable to this petition. There's no evidence that this is not compatible to the Comprehensive Community Plan of the Town of Tiverton. This motion is based on evidence presented by the witnesses, the testimony presented and there is no contrary evidence to any of the testimony that was presented by the applicant. Mr. Jackson seconded. The vote to grant was unanimous. Voting were: Chairwoman Ms. Lise Gescheidt, Mr. Richard Taylor, Mr. Jay Jackson, Ms. Wendy Taylor-Humphrey and Mr. Collins.

2. A petition has been filed by Lee Hoyer for the Tiverton Public Library requesting a special use permit from Article XII Section 3.e. and 4.b. of the Tiverton Zoning Ordinance in order to erect a freestanding sign at 34 Roosevelt Avenue on the corner of Roosevelt Avenue and Bulgarmarsh Road being Plat 513 Lot 127 on Tiverton Tax Assessor's maps closer that the minimum setback required and within the street intersection triangle required in a General Commercial zoning district.

#### **DECISION:**

Mr. Lee Hoyer of 27 Sloop Lane in Tiverton was sworn in and stated he is a member of the board of trustees of the Tiverton Public Library and also has been the chairman of the building committee for the new library. Mr. Hoyer went on to give a brief history of building the library and stated the library purchased the land on that corner from Joe Bossom who also is part of the founders of Sandywoods, and when that land was purchased, there was an agreement that Sandywoods had an easement to join the library to put up one sign at that corner and make it as

clear and as simple as possible that would identify the turn to the library as well as the turn to Sandywoods. Mr. Hoyer stated this is an agreement that is part of the town record.

Mr. Hoyer explained that the sign is 5 feet tall and 10 feet long which has both Tiverton Public Library and Sandywoods Center for the Arts identified in distinctive colors. The plans were reviewed by the Code Enforcement Office and they indicated that the dimensions were fine but there is a requirement specific to commercial districts for a 10 foot setback and a street triangle of 45 foot at the intersection of a state road. Mr. Hoyer stated he is seeking a special use permit to erect a sign that would be behind and away from the street in relation to the stop sign and back into the property. The sign would be placed where it would not interfere with sight lines of a car coming up to the stop sign on Roosevelt to be visible from a car driving on Bulgarmash, nor would it prohibit a car at the stop sign from seeing a car on Bulgarmash. Mr. Hoyer also stated the public safety would not be harmed because it would prevent people from missing the turn and having to stop and make a u-turn.

The Chairwoman asked if this sign would be exempt under Section 10 from a permit as a public sign since the town owns the library. Ms. Taylor-Humphrey asked is it up to the library to grant that easement or is it up to the town or is it up to the Zoning Board. Mr. Hoyer explained the easement was granted while the land was owned by the Tiverton Building Committee not the town. The property was then transferred to the town but the easement would persist.

Mr. Swirkza stated the fact that Sandywoods doesn't fall under the public sign subsection is what brings it into the dimensional requirements and why it's before the Board. Ms. Taylor-Humphrey asked Mr. Swirkza if he read the wording of the easement and he responded he did not see it in the packet. Mr. Hoyer stated he did not include it because he didn't know it was required and it is recorded in the town records.

Mr. Taylor asked if the sign is going to be a lighted sign and Mr. Hoyer responded it would have ground lighting to light the sign. There was further discussion on the lighting and then the Chairwoman stated it seems the Board is in agreement that the sign needs to be illuminated and it needs not to be a visual impairment to people who are traveling on the road.

Rosemary Eva was sworn in and stated that a sign should be put up and that it be lit so people can find the library and it would be a plus for a lot of people. Mr. Hall suggested that before the sign is erected, the plans should be presented to the police chief for his review.

At this time, the Board closed the Public Hearing and began a discussion for the purpose of reaching a decision. Mr. Collins stated based upon the testimony received and exhibits accepted and reviewed, the sign will serve the welfare of the town and it will have no impact on the public health, safety, morals or welfare or impact on neighboring uses. Ms. Taylor-Humphrey agreed with Mr. Collins but added she is excluding the Sandywoods part of the sign. Mr. Jackson agreed with Mr. Collins adding after seeing the picture of the sign, he is not opposed. The Chairwoman stated the area where the sign is to be placed is the clearest so people can know

where public buildings are without disrupting any vehicular traffic and added it's important the easement be included as part of the Board's decision.

Ms. Taylor-Humphrey made a motion to approve the special use permit solely for the Tiverton Library part of the sign and that the Board allow it to be closer than the minimum setback required as requested conditioned on the fact that the Police Department and Public Works give approval to the town that they have no issues with the proposed location, and that this is based on the fact that all of the criteria for the special use permits have been met one being that the public convenience and welfare will be served which was attested to both by the petitioner and a witness indicating that people could not find the library without a sign, that it will not be detrimental to public health, safety, morals or welfare which was also testified to, that it would be compatible with neighboring uses and it will not adversely affect the general character of the area and that is based on the proposed Tiverton Library portion of the sign which looks to appear as if it is compatible with the general area, that it will not create a nuisance or hinder or endanger vehicular or pedestrian movement which was shown in testimony and in the documentation, that it will have adequate provision made for water service, et cetera which is not applicable here, and that it will be compatible with the Comprehensive Community Plan of the Town of Tiverton which was also testified to. The lighting does not need to be addressed solely because looking at the prohibited sign section of Article 12, Section 7(c) that will be determined by the Building Official. Mr. Collins added he would like to enter into the record the photographs of the sign the petitioner showed the Board. Mr. Collins seconded. The vote was unanimous. Voting were: Chairwoman Ms. Lise Gescheidt, Mr. David Collins, Mr. Richard Taylor, Mr. Jay Jackson and Ms. Wendy Taylor-Humphrey.

#### **ADMINISTRATIVE ISSUES:**

Mr. Taylor made a motion to accept the minutes of the October 7th and the November 4th meeting as written. Mr. Alzaibak seconded. The Chairwoman did not vote because she was not present at those meetings. Voting were: Mr. Richard Taylor, Mr. Jay Jackson, Mr. David Collins, Ms. Wendy Taylor-Humphrey and Mr. George Alzaibak.

Mr. Swirkza gave a brief update on the Town of Tiverton vs. William McLaughlin matter and stated on November 9th, the Court awarded the town against Mr. McLaughlin a fine in the amount of around \$69,000 for being in violation. This will allow the town to levy Mr. McLaughlin's property to collect that amount of money. Mr. McLaughlin filed a motion to give him time to take the shed down at a price he can afford. The judge gave Mr. McLaughlin 90 days to take the shed down, and if he doesn't complete it within 90 days of November 9th which is February 7th, the town can go in and take it down without any further legal action.

There was no further discussion. Mr. Collins made a motion to adjourn. Mr. Jackson seconded. The vote was unanimous. Voting were: Chairwoman Ms. Lise Gescheidt, Mr. David Collins, Mr. Richard Taylor, Mr. Jay Jackson, Ms. Wendy Taylor-Humphrey, and Mr. George Alzaibak.

The Zoning Board meeting concluded at 8:53 p.m.

**C E R T I F I C A T E**

I, Salvina S. Ferreira, Registered Professional Reporter, hereby certify that the foregoing 5 pages of the Tiverton Zoning Board of Review minutes are transcribed to the best of my knowledge, skill and ability.

I further certify that I am not interested in the event of the action.

IN WITNESS WHEREOF, I have hereunto subscribed my hand and affixed my seal of office this 16th day of December, 2015.

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Salvina S. Ferreira, RPR

My commission expires: September 26, 2017  
ID # 28792

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